

110TH CONGRESS
1ST SESSION

S. _____

To amend the Endangered Species Act of 1973 to improve the processes for listing, recovery planning, and delisting, and for other purposes.

IN THE SENATE OF THE UNITED STATES

Mr. THOMAS (for himself, Mr. ENZI, Mr. ALLARD, Mr. CRAIG, and Mr. HAGEL) introduced the following bill; which was read twice and referred to the Committee on _____

A BILL

To amend the Endangered Species Act of 1973 to improve the processes for listing, recovery planning, and delisting, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Endangered Species
5 Reform Act of 2007”.

6 **SEC. 2. LISTING PROCESS REFORMS.**

7 (a) BEST SCIENTIFIC AND COMMERCIAL DATA
8 AVAILABLE.—

1 (1) IN GENERAL.—Section 3 of the Endangered
2 Species Act of 1973 (16 U.S.C. 1532) is amended—

3 (A) by striking the section heading and in-
4 serting the following:

5 **“SEC. 3. DEFINITIONS AND GENERAL PROVISIONS.”;**

6 (B) by striking “For the purposes of this
7 Act—” and inserting the following:

8 “(a) DEFINITIONS.—In this Act:”; and

9 (C) by adding at the end the following:

10 “(b) GENERAL PROVISIONS.—In any case in which
11 this Act requires the Secretary to use the best scientific
12 and commercial data available, the Secretary shall obtain
13 and use scientific or commercial data that are empirical
14 or have been field-tested or peer-reviewed.”.

15 (2) CONFORMING AMENDMENT.—The table of
16 contents in the first section of the Endangered Spe-
17 cies Act of 1973 (16 U.S.C. prec. 1531) is amended
18 by striking the item relating to section 3 and insert-
19 ing the following:

“Sec. 3. Definitions and general provisions”.

20 (b) FINDING OF SUFFICIENT BIOLOGICAL INFORMA-
21 TION TO SUPPORT RECOVERY PLANNING.—Section 4(b)
22 of the Endangered Species Act of 1973 (16 U.S.C.
23 1533(b)) is amended—

24 (1) in paragraph (1)(A)—

1 (A) by striking “shall make” and inserting
2 the following: “shall—

3 “(i) make”;

4 (B) by striking the period at the end and
5 inserting “; and”; and

6 (C) by adding at the end the following:

7 “(ii) determine that a species is an endangered
8 species or a threatened species only if the Secretary
9 finds that there is sufficient biological information to
10 support recovery planning for the species under sub-
11 section (f).”; and

12 (2) in the first sentence of paragraph (3)(A), by
13 inserting before the period at the end the following:

14 “and as to whether the petition presents sufficient
15 biological information to support recovery planning
16 for the species under subsection (f)”.

17 (c) PETITION PROCESS.—Section 4(b)(3) of the En-
18 dangered Species Act of 1973 (16 U.S.C. 1533(b)(3)) is
19 amended by adding at the end the following:

20 “(E) LISTING PETITION INFORMATION.—

21 In the case of a petition to add a species to a
22 list published under subsection (c), a finding
23 that the petition presents the information de-
24 scribed in subparagraph (A) shall not be made
25 unless the petition provides—

1 “(i) documentation from a published
2 scientific source that the fish, wildlife, or
3 plant that is the subject of the petition is
4 a species;

5 “(ii)(I) a description of the available
6 data on the historical and current range
7 and distribution of the species;

8 “(II) an explanation of the method-
9 ology used to collect the data; and

10 “(III) identification of the location
11 where the data can be reviewed;

12 “(iii) an appraisal of the available
13 data on the status and trends of all extant
14 populations of the species;

15 “(iv) an appraisal of the available
16 data on the threats to the species;

17 “(v) an identification of the informa-
18 tion contained or referred to in the petition
19 that has been peer-reviewed or field-tested;
20 and

21 “(vi) a description of at least 1 study
22 or credible expert opinion, from a person
23 not affiliated with the petitioner, to sup-
24 port the action requested in the petition.

25 “(F) NOTIFICATION TO STATES.—

1 “(i) PETITIONED ACTIONS.—If a peti-
2 tion is found to present information de-
3 scribed in subparagraph (A), the Secretary
4 shall—

5 “(I) notify and provide a copy of
6 the petition to the State agency of
7 each State in which the species is be-
8 lieved to occur; and

9 “(II) solicit the assessment of the
10 agency as to whether the petitioned
11 action is warranted, which assessment
12 shall be submitted to the Secretary
13 during a comment period ending 90
14 days after the date of the notification.

15 “(ii) OTHER ACTIONS.—If the Sec-
16 retary has not received a petition to add a
17 species to a list published under subsection
18 (c) and the Secretary is considering pro-
19 posing to list the species as an endangered
20 species or a threatened species under sub-
21 section (a), the Secretary shall—

22 “(I) notify the State agency of
23 each State in which the species is be-
24 lieved to occur; and

1 “(II) solicit the assessment of the
2 agency as to whether the listing would
3 be in accordance with subsection (a),
4 which assessment shall be submitted
5 to the Secretary during a comment
6 period ending 90 days after the date
7 of the notification.

8 “(iii) CONSIDERATION OF STATE AS-
9 SESSMENTS.—Before publication of a find-
10 ing described in subparagraph (A) that a
11 petitioned action is warranted, the Sec-
12 retary shall consider any assessments sub-
13 mitted with respect to the species within
14 the comment period established under
15 clause (i) or (ii).”.

16 (d) IMPROVEMENT OF PUBLIC HEARINGS IN THE
17 LISTING PROCESS.—

18 (1) IN GENERAL.—Section 4(b)(5) of the En-
19 dangered Species Act of 1973 (16 U.S.C.
20 1533(b)(5)) is amended by striking subparagraph
21 (E) and inserting the following:

22 “(E) promptly hold at least 2 hearings in each
23 State in which the species proposed for determina-
24 tion as an endangered species or a threatened spe-
25 cies is located (including at least 1 hearing in an af-

1 fected rural area if 1 or more rural areas within the
2 State are affected by the determination), except that
3 the Secretary may not be required to hold more than
4 10 hearings under this subparagraph with respect to
5 the proposed regulation.”.

6 (2) DEFINITION OF RURAL AREA.—Section 3(a)
7 of the Endangered Species Act of 1973 (16 U.S.C.
8 1532(a)) (as amended by subsection (a)(1)(B)) is
9 amended—

10 (A) by redesignating paragraphs (12)
11 through (14) as paragraphs (11) through (13),
12 respectively; and

13 (B) by inserting before paragraph (15) the
14 following:

15 “(14) RURAL AREA.—The term ‘rural area’
16 means a county or unincorporated area that has no
17 city or town with a population of more than 10,000
18 individuals.”.

19 (3) CONFORMING AMENDMENT.—Section 7(n)
20 of the Endangered Species Act of 1973 (16 U.S.C.
21 1536(n)) is amended in the first sentence by striking
22 “, as defined by section 3(13) of this Act,”.

23 (e) EMERGENCY LISTING.—Section 4(b)(7) of the
24 Endangered Species Act of 1973 (16 U.S.C. 1533(b)(7))
25 is amended in the first sentence by striking “posing a sig-

1 nificant risk to the well-being” and inserting “that poses
2 an imminent threat to the continued existence”.

3 (f) OTHER LISTING REFORMS.—Section 4(b) of the
4 Endangered Species Act of 1973 (16 U.S.C. 1533(b)) is
5 amended by adding at the end the following:

6 “(9) AVAILABILITY OF LISTING DATA.—

7 “(A) IN GENERAL.—Subject to subpara-
8 graph (B), upon publication of a proposed regu-
9 lation determining that a species is an endan-
10 gered species or a threatened species, the Sec-
11 retary shall make publicly available—

12 “(i) all information on which the de-
13 termination is based, including all sci-
14 entific studies and data underlying the
15 studies; and

16 “(ii) all information relating to the
17 species that the Secretary possesses and
18 that does not support the determination.

19 “(B) LIMITATION.—Subparagraph (A)
20 does not require disclosure of any information
21 that—

22 “(i) is not required to be made avail-
23 able under section 552 of title 5, United
24 States Code (commonly known as the
25 ‘Freedom of Information Act’); or

1 “(ii) is prohibited from being disclosed
2 under section 552a of title 5, United
3 States Code (commonly known as the ‘Pri-
4 vacy Act’).

5 “(10) ESTABLISHMENT OF CRITERIA FOR SCI-
6 ENTIFIC STUDIES TO SUPPORT LISTING.—Not later
7 than 1 year after the date of enactment of this para-
8 graph, the Secretary shall promulgate regulations
9 that establish criteria that must be met for scientific
10 and commercial data to be used as the basis of a de-
11 termination under this section that a species is an
12 endangered species or a threatened species.

13 “(11) FIELD DATA.—

14 “(A) REQUIREMENT.—The Secretary may
15 not determine that a species is an endangered
16 species or a threatened species unless the deter-
17 mination is supported by data obtained by ob-
18 servation of the species in the field.

19 “(B) DATA FROM LANDOWNERS.—The
20 Secretary shall—

21 “(i) accept and acknowledge receipt of
22 data regarding the status of a species that
23 is collected by an owner of land through
24 observation of the species on the land; and

1 “(ii) include the data in the rule-
2 making record compiled for any determina-
3 tion that the species is an endangered spe-
4 cies or a threatened species.”.

5 **SEC. 3. DEADLINE FOR DEVELOPMENT OF RECOVERY**
6 **PLANS.**

7 Section 4(f) of the Endangered Species Act of 1973
8 (16 U.S.C. 1533(f)) is amended by adding at the end the
9 following:

10 “(6) DEADLINE FOR DEVELOPMENT OF RECOV-
11 ERY PLANS.—The Secretary shall—

12 “(A) begin developing a recovery plan re-
13 quired for a species under paragraph (1) on the
14 date of promulgation of the proposed regulation
15 to implement a determination under subsection
16 (a)(1) with respect to the species; and

17 “(B) issue a recovery plan in final form
18 not later than the date of promulgation of the
19 final regulation to implement the determina-
20 tion.”.

21 **SEC. 4. DELISTING.**

22 Section 4(f) of the Endangered Species Act of 1973
23 (16 U.S.C. 1533(f)) (as amended by section 3) is amended
24 by adding at the end the following:

1 “(7) EFFECT OF FULFILLMENT OF RECOVERY
2 PLAN CRITERIA.—

3 “(A) CHANGE IN STATUS.—If the Sec-
4 retary finds that the criteria of a recovery plan
5 have been met for a change in status of the
6 species covered by the recovery plan from an
7 endangered species to a threatened species, or
8 from a threatened species to an endangered
9 species, the Secretary shall promptly publish in
10 the Federal Register a notice of the change in
11 status of the species.

12 “(B) REMOVAL FROM LISTING.—If the
13 Secretary finds that the criteria of a recovery
14 plan have been met for the removal of the spe-
15 cies covered by the recovery plan from a list
16 published under subsection (c), the Secretary
17 shall promptly publish in the Federal Register
18 a notice of an intent to remove the species from
19 the list.”.